

MATTHEW F. MILLER (SBN 172661)
matt.miller@us.dlapiper.com
JEFFREY TSAI (SBN 226081)
jeff.tsai@us.dlapiper.com
TOM LIN (SBN 319911)
tom.lin@us.dlapiper.com
DLA PIPER LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105
Tel: 415.836.2500
Fax: 415.836.2501

Attorneys for Plaintiff CTI III, LLC

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

CTI III, LLC,

Plaintiff,

v.

BARRY DEVINE, an individual;
TRI-MERIT, LLC, an Illinois limited
liability company; and DOES 1
through 50,

Defendants.

CASE NO. 2:21-cv-02184-JAM-DB

**CTI III, LLC'S MOTION FOR
ADMINISTRATIVE RELIEF (L.R. 233) TO
EXTEND EXPERT DISCLOSURE
DEADLINE; ORDER**

Judge: Hon. John A. Mendez

I. INTRODUCTION AND BACKGROUND

Plaintiff CTI III, LLC (“CTI”) submits this administrative motion (the “Motion”) for relief pursuant to Local Rule 233 seeking to extend the deadline for initial expert disclosures until February 29, 2024. CTI has previously met and conferred with Defendants Barry Devine (“Devine”) and Tri-Merit, LLC (“Tri-Merit”) regarding the relief requested in this Motion. Tri-Merit stipulates to the requested relief. Counsel for Devine has not been able to reach her client for his position at this time due to holiday travels.

A. The Parties’ Prior Stipulations to Continue The Expert Disclosure Deadline.

CTI filed the operative complaint on January 7, 2022, alleging trade secret misappropriation, breach of contract, and economic interference. Docket No. 10. On May 24, 2023, the undersigned counsel substituted into this action on behalf of CTI. Docket No. 28. On July 27, 2023, the Court granted the Parties’ stipulation to continue the expert disclosure deadline to November 2, 2023, in light of CTI’s new counsel’s substitution. Docket No. 32.

On September 29, 2023, the Parties entered into a stipulation for, and the Court granted, the entry of a preliminary injunction against Devine and Tri-Merit. Docket No. 37 (the “Injunction”). The Injunction compelled, among other things, forensic imaging of Devine’s and Tri-Merit’s electronic devices that may contain CTI’s documents (as defined in the Injunction). On October 6, 2023, the Court granted the Parties’ stipulation to continue the expert disclosure deadline to January 15, 2024, in order for the relief provided by the Injunction to be completed.

B. The Unforeseen Delay with Receiving Relief Provided by The Injunction.

The forensic analyst (the “Analyst”) whom the Parties mutually selected has begun imaging Defendants’ devices. However, the Analyst’s review and final work product have encountered unforeseen delays. Specifically, the Analyst, despite explicit instruction from the Parties, did not limit the review to documents within a particular time period, nor did the Analyst exclude documents that are likely not CTI’s documents—e.g., Devine’s personal documents and/or privileged communications between Devine and his counsel. As such, the Analyst is now conducting a secondary review, which as of the time of this filing remains incomplete. Declaration of Matthew

1 F. Miller in Support of CTI's Motion for Administrative Relief ("Miller Decl.") ¶ 2, Ex. 1. The
2 Parties have been diligent in seeking to expedite the Analyst's review including by scheduling
3 multiple phone and virtual conferences with the Analyst and encouraging numerous status updates
4 while conveying a sense of urgency in timing of the Analyst's delayed work product.

5 **C. The Parties' Diligent Efforts to Litigate This Action And Upcoming Mediation.**

6 In the six months since CTI's current counsel has been involved, each of the Parties have
7 propounded and responded to written discovery. The Parties are also working to schedule
8 depositions in January 2024. CTI and Tri-Merit are engaging in ongoing meet-and-confer
9 discussions regarding Tri-Merit's document production specifically in order for Tri-Merit to provide
10 documents and information for CTI to prepare its expert reports. CTI and Tri-Merit have agreed to
11 a protocol in which Tri-Merit would search for and produce certain documents—including financial
12 documents—dependent on the forensic results from the Analyst. The Analyst's delays in providing
13 his own work product have thus cascaded into delaying Tri-Merit's document production. The
14 Parties are also working to schedule their first mediation for mid-February 2024.

15 **II. MOTION TO EXTEND EXPERT DISCLOSURE DEADLINE**

16 In light of the foregoing, CTI and Tri-Merit respectfully request the Court to continue the
17 current January 15, 2024 expert disclosure deadline (and the related rebuttal expert disclosure
18 deadline) by forty-five (45) days. Specifically, the Court should extend the expert disclosure
19 deadline to February 29, 2024; and it should correspondingly extend the rebuttal expert disclosure
20 deadline to April 15, 2024. CTI is not requesting any other modification to the current schedule.
21 While Tri-Merit stipulates to this extension, counsel for Devine has been unable to reach him in
22 order to agree to such stipulation due to ongoing holiday travel.

23 Enlarging the time for the Parties to submit expert disclosures would not prejudice any of
24 the Parties. By contrast, CTI submits that the extension would benefit the Parties by saving costs as
25 they attempt alternative dispute resolution. Discovery is ongoing, and the Parties anticipate
26 mediating this action in less than two months. The forensic findings ordered by the Injunction—
27 which have not been completed (Miller Decl. ¶ 2.)—will be part and parcel to preparing fulsome

expert reports. Additionally, the document production that is currently on hold by Tri-Merit, as it awaits the forensic findings for efficiency and cost-saving purposes, includes financial documents and information, among other discovery, which will be a necessary component of CTI's damages expert report.

Accordingly, CTI respectfully requests the Court find good cause and enter the below, limited modification to the current schedule pertaining only to expert disclosures.

<u>Event</u>	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Expert Disclosures	1/15/24	2/29/24
Rebuttal Expert Disclosures	2/26/24	4/15/24

Dated: December 21, 2023

DLA PIPER LLP (US)

By: /s/ Matthew F. Miller

MATTHEW F. MILLER
JEFFREY TSAI
TOM LIN
Attorneys for Plaintiff
CTI III, LLC

ORDER

After full consideration of CTI III, LLC's Motion For Administrative Relief to Extend Expert Disclosure Deadline and good causing appearing;

IT IS HEREBY ORDERED:

1. The Expert Disclosures are due **February 29, 2024**; and
2. The Rebuttal Expert Disclosures are due **April 15, 2024**.

Dated: December 26, 2023

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ

SENIOR UNITED STATES DISTRICT JUDGE